

**Application Number**

P/2011/0563/PA

**Site Address**

81 Kingsway Avenue  
Paignton  
Devon  
TQ4 7AB

**Case Officer**

Mr Robert Pierce

**Ward**

Churston With Galmpton

**Description**

Resubmission of application P/2011/0051/ to change the use to hot food take away (A5) from retail (A1) with revised opening hours of 12.00 noon to 10.00 PM Monday to Saturday

**Executive Summary/Key Outcomes**

Planning permission is sought for the change of use of a vacant retail premises to a hot food takeaway. Subject to control over its hours of opening and adequate extract ventilation the proposal is considered to be acceptable as it will result in the occupation of a vacant premises, it will provide a community facility and it will create employment to the benefit of the local economy.

**Recommendation**

Approval.

**Site Details**

The site is located in a parade of six small shops with flats over in a residential area comprising bungalows on Kingsway. The unit is currently vacant as are the majority of other units within the parade.

**Detailed Proposals**

Permission is sought for a change of use of the premises to a hot food takeaway. No external alterations are indicated to the property and the proposed hours of operation are 12 noon to 10pm Monday to Saturday. This is a resubmission of a recently withdrawn application which was for much longer opening hours.

**Summary Of Consultation Responses**

*Environmental Health Officer:* The resubmission has reduced the hours of opening and this has now addressed the majority of the concerns. The submitted details of the equipment to be installed to treat and disperse emissions from cooking operations on the premises are considered to be acceptable.

### **Summary Of Representations**

Large number of objections received, main issues raised include : loss of privacy due to evening opening hours, smell and litter, noise from customers, already a lot of takeaway outlets in the area and potential for anti-social behaviour. These have been re-produced and placed in The Members Room.

### **Relevant Planning History**

P/1980/2062	81 Kingsway Avenue	Use as Cycle and Moped Centre Refused 26.08.1980
P/1983/2991	81 Kingsway Avenue	Use as Hot Takeaway Food Shop Refused 6. 02.1984 Reason: Detrimental to the amenities enjoyed by residential occupiers in the neighbourhood especially those in the immediate vicinity by reason of smell and disturbance particularly during the evening open hours.
P/1990/1079	85 Kingsway Avenue	Use as hot food takeaway Refused 17th August 1990
P/1991/1502	85 Kingsway Avenue	Use as hot food takeaway Refused and Appeal Dismissed 11th December 1991T/APP/M1140/A/92/203653/P5
P/1995/0520	79 Kingsway Avenue	Use as a veterinary surgery Approved 9th June 1995

### **Key Issues/Material Considerations**

The main issue with this proposed change of use is whether the proposed takeaway would be harmful to the amenities of nearby residents because of smell, noise and disturbance. These factors were considered at the appeal in 1992 for a similar proposal at no 85 Kingsway however at that time the proposed closing time was as late as 11.30pm and there were no submitted details for an adequate extract ventilation system. The Appeal Inspector gave consideration as to how the occupiers of the first floor flats would be affected by the pervasive cooking odours associated with a hot food takeaway and whether their living conditions would be less pleasant as a result. It was noted that a significant proportion of takeaway trade is likely to be generated in the evenings and late night custom can often be boisterous. The arrival and departure of patrons late at night, not infrequently in groups and with raised voices, together with the slamming of car doors and starting and revving of engines could be disturbing to residents at an unreasonable hour. The bungalows adjacent to the shops and those on the opposite side of Kingsway and not discounting the flats, are not so far distant that occupiers would not be unaffected by late night activity associated with the takeaway. However this proposal is for a 10 pm closing time which is much earlier than the 1992 application and the Environmental Health Officer (EHO) advises that this would now address these concerns. Secondly details of the proposed equipment to treat and disperse emissions from cooking operations on the premises have now been submitted to and agreed with the EHO. Also as

the result of further advice from the EHO the floor plan now shows a change in layout of the public area of the premises so that customers will have an area to sit and wait for their orders but no tables for eating on the premises. On balance the proposed change of use is now considered to be acceptable.

**Principle and Planning Policy -**

Saved Adopted Torbay Local Plan 1995 to 2011

Policy S10(22) Kingsway Local Centre

Policy S8 Hot Food Takeaway

**Economy -**

Will create potential local employment

**Closing the gap -**

Will provide a facility for the local community

**Climate change -**

Located near to a large residential catchment area

**Environmental Enhancement -**

Not applicable

**Accessibility -**

Very convenient location within walking distance from nearby housing

**Vibrant Town Centres -**

Would occupy a vacant commercial unit

**S106/CIL -**

Not applicable

**Conclusions**

There is considerable local opposition to this proposed change of use however it is considered that the reduced hours of opening from 12 noon to 10 pm on Mondays to Saturdays will address their concerns. Secondly the proposed extract ventilation system will overcome the potential problem of noise and smell. On balance it is considered that a well managed hot food takeaway is preferable to having a vacant unit within this small parade of shops.

**Condition(s)/Reason(s)**

01. The use of the premises hereby approved shall not commence until the equipment to treat and disperse emissions from cooking operations on the premises including noise levels and odour abatement has been installed strictly in accordance with the schedule and quotation from "Extract Canopies" dated 2nd August 2011. Following installation, the equipment shall be operated and

maintained in accordance with the manufacturer's instructions for as long as the approved use continues.

Reason : In the interests of protecting the residential amenities of the nearby residential occupiers and to meet the criteria of Policy S8 of the Saved Adopted Torbay Local Plan 1995 to 2011

02. The use hereby approved shall take place only between the hours of 12.00 noon and 10:00 p.m. on Mondays to Saturdays and not on Sundays unless with the prior written consent of the Local Planning Authority.

Reason: In the interests of the amenities of the area and to meet the criteria of Policy S8 of the Saved Adopted Torbay Local Plan 1995 to 2011.

03. The use of the premises hereby approved shall not commence until the extract ventilation flue has been installed and the ground floor layout has been arranged strictly in accordance with drawing number TM424 P2a. This situation will remain as such for as long as use hereby approved continues.

Reason: In the interests of protecting the amenities of nearby residential occupiers and to meet the criteria of Policy S8 of the Saved Adopted Torbay Local Plan 1995 to 2011.

### **Informative(s)**

01. The proposed change of use to a hot food takeaway has been assessed against the criteria of Policy S8 of the Saved Adopted Torbay Local Plan and it is considered to be an acceptable form of development.

### **Relevant Policies**

S10 - Local Centres

S8 - Hot take-away food